

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
V.) NO. 2:08-CR-33
)
JEFF F. TILLOTSON)

REPORT AND RECOMMENDATION

The defendant has filed a motion to dismiss the indictment, specifically, the first three counts of the indictment involving child pornography. (Doc. 40). These motions have been referred to the United States Magistrate Judge under the standing orders of this Court and pursuant to 28 U.S.C. § 636(b). An evidentiary hearing was held on November 6, 2008.

It is the premise of defendant's motion that the United States will attempt to prove that he provided a "remote computing service" to the public which permitted any member of the public to use his fserver as computer storage for digital data files. He asserts that 42 U.S.C. § 13032(a) requires electronic service providers to report the existence of pornography of which they have knowledge, but that such providers are under no duty to monitor the content of any electronic communications.

Defendant's argument has unnecessarily injected an element of complexity into the equation. In Count One, defendant is charged with *knowingly* distributing child pornography; in Count Two he is charged with *knowingly* advertising child pornography in interstate commerce; and in Count Three he is charged with *knowingly* possessing a computer that

contained an image of child pornography. The defendant's actual knowledge clearly is an element of each offense, and the United States either will be able to prove that element of knowledge, or it will not. If the United States fails to do so, then F.R.Crim.P. 29 comes into play. However, there is no basis to dismiss the first three counts of this indictment on a pretrial basis. Accordingly, it is respectfully recommended that defendant's motion to dismiss the first three counts of the indictment be denied.¹

Respectfully submitted,

s/ Dennis H. Inman
United States Magistrate Judge

Tillotson, Jeff33

¹Any objections to this report and recommendation must be filed within ten (10) days of its service or further appeal will be waived. 28 U.S.C. § 636(b)(1)(B) and (C). *United States v. Walters*, 638 F.2d 947-950 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).